

FACT SHEET

HB 529 "Generally revise laws governing crematoriums"

BACKGROUND

How many people chose cremation? (Montana State University Extension Service (MT200201HR Revised 4/12))

Cremation has continued to increase in the United States since 1876, when the first crematory was built in Pennsylvania. During 2009, Montana had a cremation rate of 65 percent, compared to Nevada at 73 percent; Washington, 70 percent; Oregon, 68 percent; Hawaii, 69 percent; and Vermont, 59 percent. In 2009, the national cremation rate was 38 percent.

Five primary reasons why cremation is chosen: (Wirthlin Report /2006)

1. Saves Money (30%)
2. Saves Land (13%)
3. Simpler (8%)
4. Body Not in Earth (6%)
5. Personal Preference (6%)

The market is responding to the increased acceptance and choice of cremation. Some are making substantial private investment in areas where the market supports choosing direct cremation as an end-of-life decision.

CHANGES TO STATUTE

The proposed legislation makes NO changes in laws governing morticians or mortuaries. There are three changes contemplated by this legislation. See shaded areas below:

"37-19-705. Cremation Direct cremation -- cremation procedures -- cremation containers. (1) Human remains may not be cremated except in a licensed crematory. A crematory operator may receive human remains directly from the place of death, prepare the remains for cremation, and perform the cremation.

Consumer Issue:

End of life issues are emotional and a matter of great personal contemplation and determination, and they can be expensive. Many Montanans desire a more simple way to prepare human remains for memorial. Costs are necessarily being considered. If loved ones and their families make the decision to choose cremation, they should be able to work directly with a licensed crematory operator and not be required to work unnecessarily through a funeral director.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any a pacemakers pacemaker or other hazardous implants implant. A crematory operator or crematory technician shall inspect for and remove a pacemaker or other potentially hazardous implant in human remains received by the crematory.

Confusion:

Statute clearly states that a body may not be cremated with a pacemaker or other potentially hazardous implant. ARMs state: "The crematory operator is responsible for the safe operation of the cremation equipment." *NOTE: This language is from the Administrative Rules which govern crematories; it is intended to protect crematory operators from the danger of EXPLOSION of the implanted device IN THE HEAT OF THE CREMATION PROCESS. It has nothing to do with morticians because morticians are not required to remove implants such as pacemakers when preparing bodies for burial. There is minimal leakage of blood or bodily fluids from this very simple procedure.*

The conclusion should be: The operator of a crematory is therefore responsible for the human remains to be cremated, and for obvious safety reasons, common sense dictates that crematory operators have the legal right to remove hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains. If a crematory receives human remains that are not in a cremation container, then the crematory operator or crematory technician shall place the human remains in a cremation container before cremation.

Common Sense:

Montana law requires the human remains to be in a cremation container which must be cremated with the human remains. Therefore, a crematory should be able to place human remains in the required container if it receives remains that are not in a container.

ISSUES OF CONCERN

PUBLIC HEALTH AND SAFETY

Montana Statute already adequately protects the health of the public.

There should be little concern that any of the three proposed changes to the statute present a public health issue. Montana statute currently requires that all crematory facilities shall be kept and maintained in a clean and sanitary condition; all appliances used in the cremation process of human bodies shall be thoroughly cleansed and disinfected; and floors and walls shall be constructed of an impervious material. Statute also requires that a facility designated for the retention of human remains prior to cremation must: (a) comply with any applicable public health law; (b) preserve the dignity of the human remains; (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and (d) be secure from access by anyone other than authorized personnel. Cremation containers are also prescribed by statute and must meet the following standards: (a) be composed of readily combustible materials suitable for cremation; (b) be able to be closed in order to provide a complete covering for the human remains; (c) be resistant to leakage and spillage; (d) be rigid enough for handling with ease; and (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

Crematory operators need to adhere to, and do adhere to, universal health standards as outlined in several documents. These practices include the use of gloves when handling bodies, avoidance of handling of personal items with contaminated gloves or hands, and the use of personal protective equipment (gowns, masks, and eyewear) as appropriate. The National Institute of Health states: "Simple precautions may greatly reduce the potential risk of transmission of any pathogenic microorganisms associated with the handling of corpses. The practice of basic hygienic measures, such as handwashing, the use of universal precautions as outlined in several documents and the use of personal protective equipment will greatly mitigate the risk of transmission of any potential pathogens from corpses."

SOME SUGGEST THESE DUTIES SHOULD BE RESERVED TO FUNERAL DIRECTORS

Some suggest that direct acceptance of human remains by a crematory, the placing of human remains in a crematory container and the removal of pacemakers is the practice of mortuary science and should remain only in the purview of funeral directors. However, Montana law has defined pertinent terms, which when read together lead to a different conclusion. For example:

"Mortuary science" means the profession or practice of funeral directing and embalming.

"Funeral directing" includes: (a) supervising funerals; (b) the making of preneed or at-need contractual arrangements for funerals; (c) preparing dead bodies for burial, other than by embalming; (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and (e) representing to the public that one is a funeral director.

The changes contemplated in this legislation do not infringe on funeral directing and are not mortuary science.